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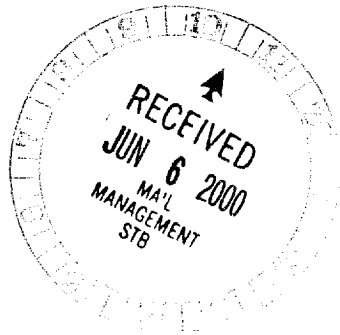

June 3, 2000

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

Re: Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the Reply Comments of Wisconsin Central System, dated June 3, 2000. A 3.5-inch computer disk containing the text of the comments in WordPerfect 7.0 format also is enclosed.

I have included an extra copy of this transmittal letter, and would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Very truly yours,

Janet H. Gilbert
Attorney for Wisconsin Central System

JHG:je

Encl.

CC: Parties of Record

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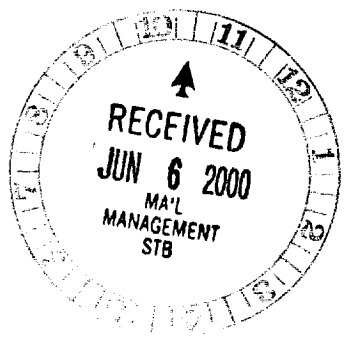

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REPLY COMMENTS OF
WISCONSIN CENTRAL SYSTEM

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Dated: June 3, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REPLY COMMENTS OF
WISCONSIN CENTRAL SYSTEM

Wisconsin Central System ("WC") hereby submits these reply comments addressing the proposed revision of the Board's procedures for "major" rail consolidation transactions.[1] For the most part, WC believes the initial comments herein -- notable in number as well as in their breadth and depth -- adequately convey to the Board the various positions and arguments on the subject matter of the advance notice of proposed rulemaking. The additional comments that follow narrowly address several areas in which WC has a particular interest, expertise or perspective.

1. Bias Against Mergers

A number of parties have suggested that the Board adopt, as a matter of policy, some kind of on-going bias or presumption against further major rail transactions. Indeed, some commenters advocate that the Board simply not allow any more mergers among Class I carriers. Such an "all mergers are bad" assumption is inconsistent with both the Board's statutory mandate and with rational transportation policy.

The Interstate Commerce Act directs the Board to approve major merger transactions if they are "consistent with the public interest." 49 U.S.C. Sec.11323(c). The statute contains standards for evaluating individual merger proposals and contains no underlying presumption that such proposals are disfavored. For the Board to now conclude, without any specific proposals and

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1 WC is comprised of Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, Wisconsin Chicago Link Ltd. and Algoma Central Railway, Inc.

evidence before it, that an entire category of transactions should be precluded or impeded would abrogate the Board's adjudicatory duties under the statute – and would plainly be beyond the scope of this rulemaking proceeding in any event. The Board should continue its unbiased, case-by-case approach to major merger applications modified, if at all, to consider other applications simultaneously before it.

We note that many of the comments expressing reservations about future rail mergers do so based on the implementation problems that have accompanied recent transactions, and not because of any inherent structural or competitive flaw in the proposals themselves. WC agrees that the Board needs to assure that mergers are carried out wisely and competently, and that applicants do what they say they will. That is far different, however, from a proposition that nothing good remains to be done through mergers. As many parties (including WC) discussed in their initial comments, rail mergers can still offer significant competitive, efficiency and financial benefits, even though elimination of redundant infrastructure is no longer a priority. The Board can certainly insist on concrete evidence of such benefits and carefully monitor transactions to assure that they are achieved. The Board should not now assume, however, that the opportunity for such benefits does not exist.

WC was pleased to learn, after reading Kansas City Southern's comments, that it is not the only carrier raising the need to reassess the Board's rules for classification of carriers as Class I, Class II or Class III, or, if limited to the context of merger rules, to acknowledge the huge gap between the larger Class I's and the smaller. The gap is so great that it calls into question what "major" transactions the Board is trying to reach with its new rules and whether rules designed to analyze transcontinental consolidations can and should be applied to more regional mergers that may be "major" by definition but clearly not "major" by scope. WC urges the Board to consider and correct this anomaly in whatever new rules it eventually promulgates.

2. Competition "Enhancements"

Another disturbing theme in many of the initial comments is that the Board should use major merger proceedings to effectively -- but selectively -- undo the competitive policies and guidelines

that the Board has adopted in recent years. According to these parties, the Board should as a matter of course impose conditions on major mergers that would offer second-carrier access to all or many of the applicants' singly-served shippers, provide relief for bottleneck situations and grant other competitive remedies -- regardless of whether the situations thereby addressed were caused by, exacerbated by or even related to the proposed transaction. Such a "back-door" and piecemeal reopening of issues that the Board has already extensively considered is neither wise nor fair, and indeed would amount to the kind of preexisting and inappropriate bias against new major rail mergers discussed above.

The Board's efforts to "correct" market access issues should be confined to specific conditions presented by the merger cases before it. Any other approach creates -- without any discernable rationale or basis -- one set of competitive access standards for carriers that elect to merge, and another set for carriers that do not. The resulting paradox is that rail carriers engaging in beneficial, end-to-end mergers would be significantly disadvantaged (or, perhaps more accurately, punished). Other carriers would gain competitive access to a whole array of the applicants' customers, while the applicants would gain nothing in return. If draconian enough, such a system would have the impact of a permanent merger moratorium.

What is fundamentally at stake here is the integrity of the administrative process and the viability of the Board's rail transportation policies. We do not understand a policy of using merger transactions as an excuse to do what the Board has already decided it should not do (but could do) directly. If the Board's Bottleneck decision and other competitive policies are wrong (and WC does not believe that they are), they should be reexamined on an open and equitable basis for all parties. If those policies are correct, the Board should not use one area of its authority to defeat its decisions in another.

At the very least, any such competition "enhancement" should be considered in individual merger proceedings, rather than adopted as a rule here. Matters such as bottleneck-rate relief and other competitive access solutions should remain grounded in sound economic analysis taking into account the impacts of product, geographic and intermodal competition. They are best reviewed on

a case-by-case basis and should not be incorporated into wholesale rule changes.

Indeed, blanket merger remedies that target off-line access issues -- such as a requirement that merger applicants offer contracts over the competitive portion of a bottleneck route where a non-applicant is the bottleneck carrier -- could have severe unintended consequences. Regional and shortline railroads, like WC, usually were established through purchases of rail properties that Class I's had walked away from -- either literally through abandonment, or effectively through management decisions that reduced maintenance, train service and equipment availability to the point that traffic levels fell and the lines became marginal. By their very nature, many shortlines and regionals serve a limited customer base and have many single-line served shippers. Shippers have benefitted by having rail transportation options maintained or returned to them by the short-lines and regionals whose destiny is closely tied to the success of those shippers in the marketplaces in which those shippers compete. Service levels for the most part have been improved, and often drastically exceed those offered by the previous Class I owner. At the same time, in nearly every instance the shortline or regional railroad faces extensive intermodal, product and geographic competition for its traffic. Merger-related rules that open up service territories on a wholesale basis could have a devastating impact on many shortlines and regionals. Any additional competitive access rule changes associated with future Class I mergers should not apply to customers and territories served currently by shortlines and regionals.

Finally, WC is in agreement with a number of parties that conditions regarding the retention of open, efficient gateways have a closer connection to the potential effects of a merger and are worth considering in major consolidation proceedings. Nearly all of the Class I carriers have indicated that the Board can act "where necessary to preserve efficient gateways over which significant traffic volumes moved pre-merger." E.g., CPR-2 at 15. Obviously, such a standard turns heavily on what constitute "significant traffic volumes.?" Traffic not deemed significant for a Class I railroad may be quite significant to another carrier. Any rules or policies adopted herein should account for such matters of perspective. Moreover, an honest consideration of this subject also

should recognize that, for the last fifteen years, talking about the maintenance of open efficient gateways has been easier and more common than actually doing it.

3. Source of Merger Benefits

Closely related to the idea that further Class I mergers should be discouraged or prohibited is that notion that most or all of the benefits resulting from a merger can be obtained through alliances or other joint ventures among railroads. WC believes in the value of cooperative initiatives among railroads and has worked hard (and often successfully) to forge close operational and marketing relationships with other carriers. But such efforts can only go so far, and cannot match the benefits provided by common control or merger.

Part of the difficulty with alliances is their limited, or at least uncertain, duration. The commitment of the significant capital and resources needed to most effectively improve rail service is simply not as likely where continuing returns on that investment are by definition subject to another party's interests. Alliances also do not allow the cost reductions -- especially with respect to general and administrative expenses -- that mergers do. And the ability to effectively coordinate car and locomotive fleet management and meet capital funding needs is substantially enhanced where only one party is involved. Alliances have their place, but merger and consolidation transactions do as well.

We note that the primary advocates of the "ally, don't merge" approach are other rail carriers. That approach may be appropriate for carriers who find themselves currently unable to merge. But there is no business, service or regulatory reason for imposing that approach on all carriers.

4. Cross Border Issues

The most notable comment about the cross border "concerns" the Board outlined in its ANPR is the relatively little attention it received, most especially from the Port Authorities about which the Board expressed concern. The U.S. and Canada have a long history of cooperation tempered with respect for the sovereignty of each over its own internal business. There is absolutely nothing inherent in the BNSF/CN proposal that merits new merger policy or rules and certainly nothing that

would warrant an over reactive, almost isolationist, approach to foreign investment in U.S. railroads – most especially not for cross border U.S./Canadian or U.S./Mexican investment.

5. Employee Protection

WC agrees with other rail carriers that issues associated with the so-called " cram-down" of collective bargaining agreement pursuant to 49 U.S.C. Sec.11321 are better handled in other forums. We also note that, although not clearly described as such, the labor protection scheme advocated by the Transportation Trades Department of the AFL-CIO goes beyond the six years of New York Dock, beyond the ten years of protection mentioned in the ANPR, and extends up to what in many instances would be lifetime income protection for employees who elect not to follow their work to a new location. Previous forays into lifetime income protection during the 1960s had significant adverse effects on the nation' s transportation system and there is no basis for imposing such a regime here.

6. Short-Line and Regional Railroad Issues

WC 's comments on this subject are reflected in its original submission. There is merit in the argument of some of the commenters that certain of the issues raised by shortlines and regionals can better be addressed in a separate proceeding or through the use of the AAR/ASLRRA agreement. But, in view of the fact that transcontinental mergers are going to create an even greater need to foster an efficient and effective feederline system, it is clearly appropriate for the Board to consider the accessibility of these lines to the rail network in any merger rules it may consider. What is clearly inappropriate is the attack on shortlines and regionals made by the Rail Labor Division Transportation Trades Department, AFL-CIO, which should be summarily dismissed by the Board and which will, hopefully, generate apologies from the individual unions represented by the Rail Labor Division.

7. Monetary Penalties

Implementation of a Board-administered system of monetary remedies for merger-related service break-downs could be extremely difficult. While attractive in principle, it is likely beyond the scope of where the Board should go. It will be difficult to draft language to address remedies

for specific merger-related damages without the Board ending up as a virtual arbitration panel for every damage claim. WC's specific concern is with how "merger-related" service issues -- as opposed to other operational difficulties that carriers experience in the normal course of business -- would be defined, and how Board-administrated monetary penalties would be limited to the merger context and not become a general way of life. At a minimum, the Board should establish a specific and limited timeframe in which the service remedy would be available. However, if the Board chooses to develop such rules, WC agrees with other parties that monetary remedies for service break-downs should be available to adversely affected rail carriers as well as shippers.

Respectfully submitted,

By: _____

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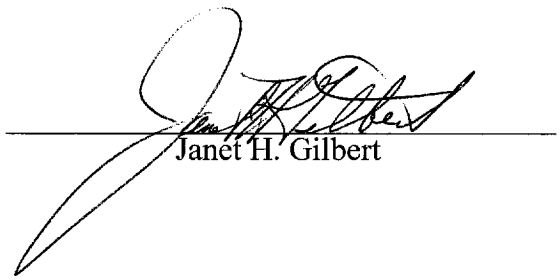
Dated: June 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments of Wisconsin Central System** has been served by first class mail, postage prepaid, on all parties of record in this proceeding, as identified on the service list issued by the Surface Transportation Board on April 28, 2000 and revised on May 10, 2000.



Janet H. Gilbert

Dated: June 3, 2000